

Tuesday, March 3, 2009

Division One

A121386 – Dotty Coplen et al., v. County of Mendocino et al.

The judgment is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.¹ (Not for Publication.)

Division Two

A120191 – The People, v. Charles Cleveland Porter.

The order extending Porter's commitment to November 21, 2008, is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A121718 – Matthew Haley, v. Landscape Maintenance of America et al.

The judgment is affirmed. Haerle, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Five

A118307 – The People, v. Gregory James West, JR.

The judgment is affirmed. Stevens, J.² We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A120836, A120920 – Gerard Chang, v. Goldstein, Gellman, Melbostad, Gibson & Harris et al.

The judgment in favor of the Firm is affirmed. Soderquist is awarded sanctions of \$450 in addition to his costs on appeal. The Firm and Bank of America are awarded their costs on appeal. Jones, P.J., We Concur: Simons, J., Stevens, J.³ (Not for Publication.)

¹ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

² Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

³ Retired Associate Justice of the Court of Appeal, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, March 4, 2009

Division Two

Wednesday, March 4, 2009(Continued)

A119908 – The People, v. Heliodoro Romero-Arellano et al.

By The Court: The petition for rehearing filed by appellant Jimenez-Gutierrez, joined by appellant Romero-Arellano, is denied. It is ordered that the partially published opinion filed herein on February 11, 2009, be modified as follows: From the first sentence of the first full paragraph on page 21, delete the following: “, not cited by either, .” not cited by either party.” There is no change in judgment. Kline, P.J. (Certified for Publication.)

Division Five

A121169 – Sharon Wolff, v. Kathleen Kemp.

The order is affirmed. Needham, J., We Concur: Jones, P.J., Stevens, J.⁴ (Not for Publication.)

A120371 – County of Napa, v. Magno, J. Ortega.

The appeal is dismissed. County shall recover its costs on appeal. County shall recover its costs on appeal. Stevens, J.⁵ We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Thursday, March 5, 2009

Division One

A121333 – The People, v. Antonio Deshawn Owens.

The judgment is affirmed. Graham, J.⁶ We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A120726 – The People, v. Paul Winters.

⁴ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁵ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁶ Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article, section 6 of the California Constitution.

Accordingly, the judgment is affirmed. Graham, J.⁷ We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Three
Thursday, March 5, 2009(Continued)

A122688 – In re D.C., a Person Coming Under the Juvenile Court Law. The People, v. D.C.

Having reviewed the entire record for potential error, we find none. Accordingly, the juvenile court's dispositional order is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Five

A119890 & A120106 – Eric W. Conner, v. Janet Spitler et al.

The trial court's order awarding attorney fees to respondent DLH is affirmed. Appellant Conner's appeal from the trial court's orders on respondents' section 425.16 motions to strike are dismissed. Costs on appeal are awarded to respondents. Simons, Acting P.J., We Concur: Needham, J., Stevens, J.⁸ (Not for Publication.)

A118575 – In re Gregory Dwayne Reed, on Habeas Corpus.

The order to show cause is discharged. The petition for writ of habeas corpus is denied. Simons, J., We Concur: Jones, P.J., Needham, J. (Certified for Publication.)

Friday, March 6, 2009

Division Two

A123390 – Boris Zhalkovsky, M.D., v. Charles Xuereb, M.D., et al.

The motion to dismiss is granted and the appeal is dismissed. Appellant's motion for sanctions is denied. Respondents shall recover their costs on appeal. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

⁷ Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁸ Retired associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A113184 – The People, v. Darryl Daniels et al.

The judgments of convictions are affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Four

A117950 – The People, v. Louis Murry III.

Friday, March 6, 2009

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Monday, March 9, 2009

The court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer Bobby Franklin, Bailiff.

A113056 People
 v.
 Michael Magidson and Jose Merel
Cause called. Mark Greenberg argued for appellant Magidson. J. Frank McCabe argued for appellant Merel. Nanette Winaker argued for respondent People of the State of California. Cause submitted.

A120174 Chauncey Banks
 v.
 Simon Property Group, et al
Cause called. Kelly J. Savage argued for appellant Banks. William Goines argued for respondent Simon Property Group. Cause submitted.

At this point, Rivera, J. left the bench and Sepulveda, J. joined the bench. Argument continued before Ruvolo, P.J., Reardon, J. and Sepulveda, J.

A121774 In re Q.C., a Minor.
 People
 v.
 Q.C.
Cause called. Michael Allen argued for appellant Q.C. Christopher Grove argued for respondent People of the State of California. Cause submitted.

A121137 American Civil Rights Foundation
 v.
 Berkeley Unified School District, et al
Cause called. Alan W. Foutz argued for appellant American Civil Rights Foundation. Jon Streeter argued for respondent Berkeley Unified School District. Cause submitted.

At this point, the court took a brief recess. Ruvolo, P.J. left the bench. The court reconvened and argument continued before Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A119263 Yaire Lopez
A119720 v.
 Bimbo Bakeries, U.S.A., Inc.
Cause called. Frank Hinman argued for appellant Bimbo Bakeries, U.S.A.
Michael vonLoewenfeldt argued for respondent Lopez. Cause submitted.

Court adjourned at 11:45 a.m.

Monday, March 9, 2009(Continued)

Division Five

A121570 – Ken Menasco, v. Samuel Nagel.

The award of fees is reversed. Jones, P.J., We Concur: Simons, J., Stevens, J.⁹
(Not for Publication.)

Tuesday, March 10, 2009

Division One

A122949 – The People, v. Juan Jorge Cisneros.

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.¹⁰ (Not for Publication.)

A120517 – The People, v. Porfirio Albert Medina.

By The Court: It is ordered that the opinion filed herein on February 25, 2009, be modified as follows: 1. On page 13, in footnote 10, between the second and third sentences, delete the following citation “(*People v. Milligan* (July 16, 2008, C056488); *People v. Curtis* There is no change in the judgment. Margulies, Acting P.J. (Certified for Publication.)

A122049 – In re D.K., a Person Coming Under the Juvenile Court Law. The People, v. D.K.

The judgment of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J. (Not for Publication.)

A123596 – S.M., v. The Superior Court of Alameda County, Alameda County Social Services Agency, R.P.I.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. V. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court

⁹ Retired Associate Justice of the Court of Appeal, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

¹⁰ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

immediately. Margulies, J., We Concur: Marchiano, P.J., Graham, J.¹¹ (Not for Publication.)

Tuesday, March 10, 2009(Continued)

A121531 – The People, v. Antoine Fowler.

The matter is remanded to the trial court for a determination of the proper custody credit in accordance with this decision and modification of the judgment to reflect that credit. Margulies, J., We Concur: Marchiano, P.J., Graham, J.¹² (Not for Publication.)

Division Two

A118547 – In re E.S., a Person Coming Under the Juvenile Court Law. The People, v. E.S.

For the foregoing reasons, the judgment is reversed and the matter is remanded to the juvenile court with directions to conduct a new jurisdictional hearing. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Certified for Publication.)

A121449 – The People, v. Christopher O'Kelley.

The abstract of the judgment is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A120324 – Global Reach Investment Corporation, v. Burlingame Investment Corporation.

By The Court: Respondent's petition for rehearing is denied. McGuiness, P.J.

¹¹ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

¹² Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Tuesday, March 10, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuinness, P.J., Pollak, J., and Siggins, J.; and B. Robbins, Deputy Clerk.

- A121533 The People,
v.
Alberto Tirrez.
Cause called and argued by Dorothy K. Bischoff, counsel for appellant, and John H. Deist, counsel for respondent. Cause ordered submitted.
- A114959 International Association of Fire Fighters Local 188, AFL-CIO,
v.
Public Employment Relations Board of the State of California;
City of Richmond.
Cause called and argued by Duane W. Reno, counsel for appellant, and Alicia Clement, counsel for PERB. Jeffrey Sloan, counsel for respondent, City of Richmond, was present but did not argue. Cause ordered submitted.
- A116737 Margaret Dufresne,
v.
City of Hayward.
Cause called and argued by Gary A. Watt, counsel for appellant, and Terrence A. Beard, counsel for respondent. Cause ordered submitted.
- At this point in the proceedings, Presiding Justice McGuinness left the courtroom and Justice Jenkins joined the bench. Justice Pollak presided over the remainder of the morning calendar.
- A119738 Margaret Hildebrandt, et al.,
v.
St. Helena Unified School District.
Cause called and argued by David Weintraub, counsel for appellants, and Lawrence M. Schoenke, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.

Tuesday, March 10, 2009(Continued)

Division Four

A123645 – T.B., v. San Francisco Superior Court, Juvenile Division, San Francisco County Human Services Agency, R.P.I.

The petition is denied. The request for stay of the section 366.26 hearing, which is set for April 8, 2009, is denied, and our decision is final as to this court immediately. (Rule 8.26(b)(3).) Ruvalo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Division Five

A119000 – The People, v. Terrance Russell Terwilligar.

A121690 – In re Terrance Russell Terwilligar on Habeas Corpus.

The judgment is affirmed. The petition for habeas corpus is denied. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A123500 – G.M., v. The Superior Court of Alameda County, Alameda County Social Services Agency et al., R.P.I.

A123501 – E.B., v. The Superior Court of Alameda County, Alameda County Social Services Agency et al., R.P.I.

In No. A123500, the petition for extraordinary writ relief is denied. The order to show cause issued on January 9, 2009, is discharged. In No. A123501, the petition for extraordinary writ relief is denied. The order to show cause issued on January 5, 2009, is discharged. Stevens, J.¹³ We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

¹³ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, § 6 of the California Constitution.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Wednesday, March 11, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Pollak, Justice, Fred Abad, Deputy Clerk, and CHP Officer Harjit Singh, Bailiff.

Justice Marchiano called the third case on calendar, *Americans for Safe Access, et al. v. County of Alameda* (A121390), and announced that counsel for respondent had an emergency and will not appear for oral argument. The case is continued to the Court's April calendar.

A115725 People,
 v.
 Scott Edgar Dyleski.
Cause called and argued by Philip M. Brooks, counsel for appellant, and Donna Provenzano, counsel for respondent. Appellant's request to submit Citation of Additional Authority was granted by J. Marchiano. No objections from respondent. Cause ordered submitted.

Justice Pollak left the bench and Judge Graham¹⁴ joined the bench.

A118804 People,
 v.
 Phoebe Redfern.
Cause called and argued by Gordon Scott, counsel for appellant, and Sharon Wooden, counsel for respondent. Cause ordered submitted.

A119960 Samuel Schauerman,
 v.
 Catherine E. Noble.
Cause called and argued by Catherine Noble, appellant in propria persona, and Robert Cochran, counsel for respondent via teleconferencing. Cause ordered submitted.

¹⁴Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution

Court adjourned until Thursday, March 12, 2009 @ 9:00 a.m.

Wednesday, March 11, 2009(Continued)

Division Two

A123141 – Jessica W., v. The Superior Court of Alameda County, Alameda County Social Services Agency, R.P.I.

The petition for extraordinary writ is denied on the merits, the stay is dissolved, and the case remanded for further proceedings. The decision is final in this court immediately. (Cal. Rules of Court, rule 8.264(b)(3).) Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

A123799 – Laurie Marie Laskey, v. Charles Industries LTD.

The motion is granted, and the purported appeal is dismissed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A119035 – Harvery Grodensky, v. Artichoke Joe's Casino et al.

A119036 – Harvery Grodensky, v. Artichoke Joe's Casino et al.

That portion of the judgment regarding the award of attorney fees to Grodensky is reversed and remanded for proceedings consistent with this opinion. The judgment is otherwise affirmed. No costs are awarded. Lambden, J., We Concur: Kline, P.J., Richman, J. (Certified for Publication.)

Division Four

A116792 – The People ex rel. Edmund G. Brown, Jr., as Attorney General, etc., et al., v. Tri-Union Seafoods, LLC, et al.

We affirm the judgment solely on the ground that substantial evidence supports the trial court's finding that methylmercury in tuna is naturally occurring, and hence the Tuna Companies are exempt from the warning requirements of Proposition 65. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Certified for Publication.)

A121833 – In re M.K., a Person Coming Under the Juvenile Court Law. San Francisco Department of Human Services, v. D.K.

The juvenile court order is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Division Five

A120228 – Ford Grenne, v. Marin County Flood Control and Water Conservation District, Flood Mitigation League of Ross Valley et al.

Wednesday, March 11, 2009(Continued)

We reverse the judgment and direct the trial court to enter judgment for Greene and to set aside and annul the July 25, 2007 election on whether to approve a storm drainage fee for Zone 9 of the Marin County Flood Control and Water Conservation District. The District shall pay Greene's costs. Dondero, J.¹⁵ We Concur: Jones, P.J., Needham, J. (Certified for Publication.)

A121691 – In re the Marriage of Nancy Dow Moody and Peter D. Moody. Nancy Dow Moody, v. Peter D. Moody.

The judgment (order awarding attorney fees) is affirmed. Wife shall pay husband's costs on appeal. Needham, J., We Concur: Simons, Acting P.J., Stevens, J.¹⁶ (Not for Publication.)

Thursday, March 12, 2009

Division One

A121998 – In re M.B., a Person Coming Under the Juvenile Court Law. The People, v. M.B.

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.¹⁷ (Not for Publication.)

¹⁵ Judge of the Superior Court of San Francisco City and County, assigned by the Chief Justice to article VI, section 6 of the California Constitution.

¹⁶ Retired Associate Justice of the Court of Appeal, First appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

¹⁷ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, March 12, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution, Raquel Arellano, Deputy Clerk, and CHP Officer Martin Fredericks, Bailiff.

A118793 Joel Thomas Toler,

v.

Janet Dostal, et al.

Cause called and argued by Jordan Sussman, counsel for appellant, and Steven Kronenberg, counsel for respondents. Cause ordered submitted.

A121671 Estate of Gertrude C. Daley, Deceased.

Ronald Daley,

v.

Gregory P. O'Keeffe.

Cause called and argued by Ronald Daley, appellant in propria persona, and Daniel Conrad, counsel for respondent. Cause ordered submitted.

Court adjourned.

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

Thursday, March 12, 2009

Court convened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Stevens, J.,* and Joshua Chow, Deputy Clerk.

A12033 County of Sonoma,

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v.

The Superior Court of Sonoma County,

Sonoma County Law Enforcement Association,

Cause called and argued by Jeffrey Sloan, counsel for petitioner, David Mastagni, counsel for real party in interest, and by Scott A. Kronland, counsel for amicus curiae for real party in interest. Submission deferred.

Court adjourned at 2:42 p.m.

Friday, March 13, 2009

Division One

A123102 – Kevin Francis David Bernie, v. Kathleen Marie Stevens.

The order is vacated. Graham, J.¹⁸ We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A120697 – Nissar Quraishi, v. Delta Pools and Patios, Inc.

The order denying the relief from default is affirmed. The judgment shall be modified by reducing the amount of compensatory damages to \$30,985.50, recalculating the amount of interest in light of the reduction, and eliminating the award of attorney's fees. In all other respects the judgment is affirmed. Each side shall bear its own costs on appeal. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A123769 – Laurie Marie Laskey, v. United Online, Inc.

The motion is granted, and the purported appeal is dismissed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A121533 – The People, v. Alberto Tirrez.

The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A117299 – The People, v. Sergio Mendoza Chavez.

The order dismissing the information is reversed and the matter is remanded for further proceedings. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

¹⁸ Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Four

A120912 – United States Fire Insurance Company, v. Sheppard, Mullin, Richter & Hampton.

The order denying Sheppard Mullin's special motion to strike is affirmed. Costs on appeal are awarded to U.S. Fire, and the matter is remanded to the trial
Friday, March 13, 2009(Continued)

court to consider a further award of attorney fees on appeal to U.S. Fire. (*Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1499-1500.) Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Certified for Publication.)

Division Five

A121544 – North Point Holdings, v. City and County of San Francisco et al.

The judgment and order denying North Point's request for relief under section 473 are affirmed. Jones, P.J., We Concur: Needham, J., Stevens, J.¹⁹ (Not for Publication.)

¹⁹ Retired Associate Justice of the Court of Appeal, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, March 16, 2009

Division One

A120084 – Leo Bryant et al., v. Sara Lee Corporation et al.

By The Court: The Petition for rehearing is denied. Marchiano, P.J.

Division Two

A121669 & A123066 – In re S.S., a Person Coming Under the Juvenile Court Law. The People, v. S.S.

The judgments sustain the petitions and the sentences imposed are affirmed. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

A120680, A121375 – In re D.L., a Person Coming Under the Juvenile Court Law. The People, v. D.L.

By The Court: The opinion filed herein on February 27, 2009, is modified as follows: (See Order). There changes do not effect a change in the judgment. Kline, P.J. (Not for Publication.)

A122666 – In re G.N., a Person Coming Under the Juvenile Court Law. The People, v. G.N.

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Monday, March 16, 2009

The Court convened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Haerle, Acting P.J., Lambden, J., Richman, J., Officer Bartlett and S. Wheeler, Deputy Clerk.

- A119735 The People,
 v.
 Cynthia Dumas-Violette.
Cause called and argued by Kari E. Hong, counsel for appellant, and Margo Yu, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A120400 Kazi Ahmed,
 v.
 Good Nite Management Inc., et al.
Cause called and argued by Lawrence Rosenzweig, counsel for appellant, and Timothy Garr Williams, counsel for respondent. Cause ordered submitted.
- A114961; In re the Marriage of Gilbert Papazian II and Amy Papazian.
A116750; Gilbert Papazian II,
& A117270 v.
 Amy Papazian;
 Lucky Strike Farms, Inc., et al.
Cause called and argued by Randy Warren, counsel for appellant, and Gregory Ellis, counsel for respondents and real parties in interest. Cause ordered submitted.

Court recessed until Tuesday, March 17, 2009 at 9:30 a.m.

Monday, March 16, 2009(Continued)

Division Five

A119777 – The People, v. Anthony Smith.

The judgment is affirmed. Stevens, J.²⁰ We Concur: Simons, acting P.J., Needham, J. (Not for Publication.)

Tuesday, March 17, 2009

Division One

A121356 – Estate of Seath Lamar Simmons, Deceased. Jitkorn Meechai, v. Ruby M. Slaughter.

The orders appealed from are affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.²¹ (Not for Publication.)

Division Two

A121180 – In re W.W., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. N.W.

The order appealed from is affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A120828 – Dominique S. Black, v. William M. Lukens et al.

²⁰ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

²¹ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

By The Court: It is ordered that the opinion filed herein on February 20, 2009, be modified as follows: (See Order). This modification does not effect a change in the judgment. The petition for rehearing is denied. Haerle, Acting P.J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Tuesday, March 17, 2009

The Court reconvened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Richman, J., Officer Singh and S. Wheeler, Deputy Clerk.

At this point of the proceedings, Presiding Justice Kline announces that the panel in the first case consists of himself, J. Haerle, and J. Lambden, the panel in the second case consists of himself, J. Haerle, and J. Richman, and the panel for the remaining cases on calendar consist of himself, J. Lambden, and J. Richman.

- A117925 The People,
 v.
 Demetri Chris Pappadopolous.
Cause called and argued by George Lawrence Schraer, counsel for appellant, and Sara Turner, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A120169 Ronald Vanderheiden,
 v.
 County of Alameda.
Cause called and argued by Christopher Platten, counsel for appellant, and Linda Ann Tripoli, counsel for respondent. Cause ordered submitted.
- A116400 The People,
 v.
 Adnan Anjum Khan.
Cause called and argued by William Hurd Dubois, counsel for appellant, and Dorian Jung, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A120258 & Terry McMillan,
A120260 v.

Jonathan Plummer;
Dolores S. Sargent.

Cause called and argued by Daniel Horowitz and Martin Garbus, counsel for appellant/respondent McMillan, Janice Vaughn-Mock, counsel for appellant/respondent Plummer, and Jennifer Anne Becker, counsel for respondent Sargent. Cause ordered submitted; within 10 days, the parties are to augment the record on appeal to clarify the disposition status of the first amended complaint of McMillan.

COURT ADJOURNED.

Tuesday, March 17, 2009(Continued)

Division Four

A121137 – American Civil Rights Foundation, v. Berkeley Unified School District et al., Judy Appel et al.

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Certified for Publication.)

A122162 – In re the Marriage of David M. Dellaria and Elizabeth L. Blickman-Dellaria. David M. Dellaria, v. Elizabeth L. Blickman.

The judgment is reversed and the trial court's imposition of sanctions is vacated. The case is remanded for further proceedings including a reconsideration of the court's sanction award under Family Code section 271. Each party to bear his and her own costs on appeal. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Certified for Publication.)

Division Five

A118468 – The People, v. Dan Bahn.

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Stevens, J.²² (Not for Publication.)

A122948 – The People, v. Ronald Raymond Stephanson.

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Stevens, J.²³ (Not for Publication.)

A121767 – The People, v. James Mark Anthony Myles.

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Wednesday, March 18, 2009

²² Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

²³ Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division One

A120089 – The People, v. Jose Alfredo Mendoza.

By The Court: The petition for rehearing is denied. Marchiano, P.J.
Wednesday, March 18, 2009(Continued)

Division Two

A120975 – In re the Marriage of Wensen and Mervin Mark Sarchet. Mervin Mark Sarchet, v. Wensen Tang Sarchet.

The January 10, 2008, order is affirmed. Haerle, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A114959 – International Association of Fire Fighters, Local 188, AFL-CIO, v. Public Employment Relations Board, City of Richmond, R.P.I.

The judgment denying appellant's petition for writ of mandate is affirmed. Respondent PERB and real party in interest City of Richmond shall be entitled to recover their costs on appeal. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Certified for Publication.)

Division Four

A121774 – In re Q.C., a Person Coming Under the Juvenile Court Law. The People, v. Q.C.

The juvenile court's wardship finding is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Division Five

A121782 – In re C.C., a Person Coming Under the Juvenile Court Law. Humboldt County Department of Health & Human Services, v. Kenneth T.

The order is affirmed. Needham, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A121382 – In re A.C., a Person Coming Under the Juvenile Court Law. The People, v. A.C.

The order is affirmed with the following probation condition modifications: 1. Appellant shall not associate with those known by her to be involved in criminal activities or with any person known by her to be disapproved by her parent or her probation officer. 2. Appellant shall not possess any paraphernalia, pictures, clothing or other miscellaneous items whose chief purpose is to promote drug or alcohol use. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Thursday, March 19, 2009

Division Two

A120400 – Kazi Ahmed, v. Good Nite Management, Inc. et al.

The judgment is affirmed. Ahmed is awarded the costs of appeal. Lambden, J., We Concur: Haerle, acting P.J., Richman, J. (Not for Publication.)

A121771 – The People, v. Timothy J. Anderson.

The validity of appellant's original plea is no longer before us, and resentencing did not require him to waive and appellant did not waive any rights. There was no sentencing error. There is no reason to question appellant's mental competence to participate in the sentencing proceeding, at which he was represented by able counsel. There are no legal issues that require further briefing. The judgment and new sentence imposed are affirmed. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

A120334 – The People, v. Christ Thomas Gilbreth.

The judgment is affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

A119738 – Margaret Hildebrandt et al., v. St. Helena Unified School District.

The judgment is affirmed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Certified for Publication.)

A121922 – The People, v. Richard Leon Couey.

Defendant was advised of his right to file a supplemental brief and has not done so. Defendant was at all times represented by competent counsel. We find in the trial record no issues warranting further briefing or consideration. The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

A118349 – The People, v. Dwayne Washington.

A123088 – In re Dwayne Washington on Habeas Corpus.

The judgment is affirmed. The abstract of judgment shall be modified to strike the three-year term imposed under section 12022.7 and to reflect that the

Thursday, March 19, 2009(Continued)

additional life term imposed under section 122022.53 will run consecutively to the life term imposed on defendant's first degree murder conviction. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

A120174 – Chauncey Banks, v. Simon Property Group et al.

The order denying Bank's motion to set aside the judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

A119189 – The People, v. Andrew Willie Ivy Walker.

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Stevens, J.²⁴ (Not for Publication.)

A122579 – In re D.S., a Person Coming Under the Juvenile Court Law. The People, v. D.S.

²⁴ Retired associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The trial court's August 6, 2008 finding that D.S. violated the conditions of his probation, and its August 20, 2008 order removing him from the home are affirmed. Stevens, J.²⁵ We Concur: Jones, P.J., Needham, J. (Not for Publication.)

²⁵ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

Thursday, March 19, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Stevens, J.,* and Eric F. Cyman, Deputy Clerk.

A12073 Alfred Bordessa et al.,
3 v.
 Fritz Lanker et al.,
 Cause called and argued by Christopher Mazzia, counsel for appellant, and by
 Stephen L. Barbose, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Needham left the bench and Justice Stevens entered.

A11875 The People,
8 v.
 Jesse Otis Garrett,
 Cause called and argued by Violet Grayson, counsel for appellant, and by Sara
 Turner, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Simons left the bench and Justice Needham entered.

A11836 The People,
2 v.
 Anthony Driver,
 Cause called and argued by Barbara Michel, counsel for appellant, and by Violet
 Lee, counsel for respondent. Cause ordered submitted.

A12181 Abernathy Valley Inc.,
7 v.
 County of Solano,
 Cause called and argued by James W. Laughlin, counsel for appellant, and by James
 Paul Corn, counsel for respondent. Cause ordered submitted.

A11985 The People,
5 v.
 Jaime Andres Barros,
 Cause called and argued by David Sundelson, counsel for appellant, and by Christina
 Vom Saal, counsel for respondent. Cause ordered submitted.

A12068 Angelo Ortega,
4 v.
 Michelle Morales,
 Cause called and argued by Mark Lewis Mosley, counsel for appellant, and by
 Timothy Dennis McMahon, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Simons entered.

A11931 Dennis Koepnick,
6 v.
 Kashiwa Fudosan America,
 Cause called and argued by Peder K. Batalden, counsel for appellant, and by Jacob
 Shapiro, counsel for respondent. Cause ordered submitted.

A12044 The People,
2 v.
 Robert Chavarria,
 Cause called and argued by Ozro William Childs, counsel for appellant, and by
 Laurence K. Sullivan, counsel for respondent. Cause ordered submitted.

Court adjourned at 11:20 a.m.

*Retired Justice from the Court of Appeal, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, March 20, 2009

Division One

A120551 – The People, v. Earl Thomas Turner.

The judgment of the trial court is modified by striking the conditions requiring defendant to “stay away from any school or parks by 2,000 feet” and requiring him to wear a GPS monitor. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment, corrected as stated above, and to forward a certified copy of the Department of Corrections and Rehabilitation. Margulies, J., We Concur: Marchiano, P.J., Graham, J.²⁶ (Not for Publication.)

Division Two

A119405 – The People, v. Jose Francisco Guevara.

The judgment is affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

A123627 – P.O., v. The Superior Court of San Mateo County, San Mateo County Human Services Agency, R.P.I.

The order to show cause is discharged, and the petition for extraordinary writ is denied on the merits. (§ 366.26, subd. (f); Cal. Rules of Court, rule 8.452; *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Rule 8.264(b)(3).) Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A120634 – The People, v. Terrence William Hunt.

The judgment is affirmed. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

Division Five

²⁶ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A122048 – In re D.M., a Person Coming Under the Juvenile Court Law. The People, v. D.M.

The dispositional order is affirmed. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

Friday, March 20, 2009(Continued)

A121867 – The People, v. Richard Mark Ellis.

The judgment is affirmed. Jones, P.J., We Concur: Simons, J., Stevens, J.²⁷ (Not for Publication.)

A120647 – In re V.S., a Person Coming Under the Juvenile Court Law. The People, v.

The judgment is affirmed. Stevens, J.²⁸ We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

A122591 – The People, v. Marcus Givens.

The judgment dismissing counts 2, 3 and 4 of the information is reversed and the case remanded to the trial court. Simons, Acting P.J., We Concur: Needham, J., Stevens, J.²⁹ (Not for Publication.)

Monday, March 23, 2009

Division One

A120517 – The People, v. Porfirio Albert Mendina.

By The Court: The petition for rehearing is denied. Marchiano, P.J.

Division Two

A123052 – In re T.G. et al., Persons Coming Under the Juvenile Court Law. Sonoma County Human Services Department, v. M.G.

²⁷ Retired Associate Justice of the Court of Appeal, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

²⁸ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

²⁹ Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The judgment is affirmed. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

A118348 – The People, v. Torrell Allen.

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Monday, March 23, 2009(Continued)

Division Three

A120306 – The People, v. Marcus Eric Davis.

The case is remanded to the trial court with directions to specify the component parts of, and the statutory authority for, the penalty assessments levied in connection with the fees imposed under sections 11372.5 and 11372.7, and, if necessary, to modify the aggregate amounts of the penalty assessments accordingly. As explained in this opinion the trial court shall not impose DNA penalty assessments pursuant to Government Code sections 76104.6 and 76104.7. The trial court shall prepare an amended abstract of judgment reflecting the aggregate penalty assessments as well as the amount of, and statutory for the component parts of each penalty assessment. The trial court shall deliver amended abstract to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed. McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

A123013 – The People, v. Noelle Mary Donahue.

The judgment is affirmed. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A123097 – The People, v. Edward Gordon Wax.

The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A120324 – Global Reach Investment Corporation, v. Burlingame Investment Corporation.

By The Court: The petition for rehearing is denied. McGuiness, P.J.

Division Four

A121602 – The People, v. James William Murray.

The order extending appellant's commitment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A116731 – Theodore Tarver, Jr., v. City and County of San Francisco.

The order appealed from is affirmed. The City is awarded its costs on appeal. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A118241 – In re the Marriage of Alai Kimberly Toure and Hodari Arisi Toure.
Alai Kimberly Toure, v. Hodari Arisi Toure.**

Monday, March 23, 2009(Continued)

Since none of the orders that are the subject of this appeal are appealable, the appeal is dismissed. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Tuesday, March 24, 2009

Division Two

A122404 – Rudy James Ng., v. Mia Hui-Chung Chiu.

The order appealed from is affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

A121095 – The People, v. Sou Hang Saephan.

The judgment is affirmed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A120402 – Sandra Shewry, as Director, etc., v. Mary Wooten, as Personal Representative, etc.

By The Court: The request for partial publication of this court's opinion, filed March 17, 2009, is granted. Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110,

this opinion filed February 27, 2009, is certified for publication with the exception of parts A, B and D of the Discussion. McGuiness, P.J.

Division Four

A121238 – The People, v. Earl Cobb.

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, March 24, 2009

The court convened at 10:00 a.m. in its courtroom at 350 McAllister Street, San Francisco, California. Present: Reardon, Acting P.J., Sepulveda, J.; and Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer Marty Fredericks, Bailiff.

A119243 Hilltop J.G., et al
v.
William Schneiderman, et al
Cause called. Daniel Smith argued for appellant Hilltop J.G. James Jackson argued for respondent Schneiderman. Cause submitted.

At this point, Sepulveda, J. left the bench and Ruvolo, P.J. joined the bench. Argument continued before Ruvolo, P.J., Reardon, J., and Rivera, J.

A120971 Air China Limited
v.
Lee Buffington, County Treasurer and Tax Collector
Cause called. George Tompkins argued for appellant Air China Limited. Eugene Whitlock argued for respondent Buffington. Cause submitted.

Court adjourned at 10:48 a.m.

Tuesday, March 24, 2009(Continued)

Division Five

A121744 – The People, v. Von Eric Keener.

The trial court minutes of June 2, 2008 in case number CR075281S are ordered corrected as follows: imposition of the section 1202.4(b) restitution fine in the amount of \$800 is stricken and imposition of the section 1202.45 parole revocation restitution fine in the amount of \$800 is reduced to \$200. The June 3, 2008 abstract of judgment in case number CR075281S is ordered modified as follows: the section 1202.4(b) restitution fine is \$200 and the section 1202.45 parole revocation restitution fine is \$200. The trial court is directed to forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. So modified, the judgment in case number CR075281S is affirmed. The judgment in case number CR082804S is affirmed. Stevens, J.³⁰ We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A120733 – Alfred Bordessa, as Trustee, etc., et al., v. Fritz Lanker, as Trustee, etc., et al.

The judgment and posttrial order are affirmed. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

A122099 – The People, v. Ernesto Andres Arroyo.

The judgment is affirmed. Stevens, J.³¹ We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Wednesday, March 25, 2009

Division One

A121760 – Main Auto Parts, Inc., v. Terence DuBord et al.

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.³² (Not for Publication.)

³⁰ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

³¹ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

A120233 – The People, v. Andrew Michael Musaelian.

Wednesday, March 25, 2009(Continued)

The probation term requiring defendant to take all prescribed medications is stricken, and in all other respects, the judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.³³ (Not for Publication.)

A119960 – Samuel H. Schauerman, v. Catherine E. Noble.

Accordingly, the judgment is affirmed. Graham, J.³⁴ We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A116400 – The People, v. Adnan Anjum Khan.

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A123816 – A.B-E. (Mother), v. The Superior Court of Humboldt County, Humboldt County Department of Health & Human Services, R.P.I.

A123817 – A.E. (Father), v. The Superior Court of Humboldt County, Humboldt County Department of Health Services, R.P.I.

The petitions are denied. The order to show cause, having served its purpose, is hereby discharged. Our decision is final as to this court immediately. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

A120644 – In re the Marriage of Beverly Padgett and Robert J. Padgett. Beverly Padgett, v. Donna Little, as Personal Representative, etc., Automotive Industries Pension Plan.

³² Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

³³ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

³⁴ Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

For the foregoing reasons, we conclude the trial court had no authority to grant Beverly's request for entry of the DRO awarding her surviving spouse benefits nunc pro tunc and we reverse that order, we reinstate the DRO originally entered by the court; and we reverse the judgment determining the DRO to be a QDRO. Each party is to bear her own costs. Kline, P.J., We Concur: Haerle, J., Richman, J. (Certified for Publication.)

A117342 – California Casualty Insurance Co., v. Beverly Quinney.

The judgment is affirmed. The cross-appeal is dismissed as moot. California Casualty shall recover its costs on appeal with respect to Quinney's appeal. The

Wednesday, March 25, 2009(Continued)

parties shall bear their respective costs incurred on the cross-appeal. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A116737 – Margaret Dufresne, v. City of Hayward.

The judgment is affirmed. Plaintiff is to recover her costs on appeal. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, March 25, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J., and Jenkins, J.; and F. Castuera, Deputy Clerk.

A120312 The People,
v.
Richard Arnold Edison.
Cause called and argued by Rudolph Kraft, counsel for appellant, and Bridget Billeter, counsel for respondent. Mr. Kraft appeared via teleconference call. Cause ordered submitted.

A122571 In re Charles on Habeas Corpus.
The People,
v.
Charles Brooks.
Cause called and argued by Chris Redburn, counsel for appellant, and Amber Wipeler, counsel for respondent. Cause ordered submitted.

A119834 D. Craig Anderson,
v.
Denham Contracting Inc.
Cause called and argued by Martin Snyder, counsel for appellant, and Eric Blumhardt, counsel for respondent. Cause ordered submitted.

A121811 U-Haul Company of California,
v.
City of Berkeley et al.
Cause called and argued by Ryan Lapidus, counsel for appellant, and Laura McKinney, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Jenkins, J. left the bench and Siggins, J. joined the bench.

A120272 George Morf,
v.

Meridan Commercial et al.

Cause called and argued by Leonard Rifkind, counsel for appellant, Joseph Minioza, counsel for respondent, Meridan Commercial, and Craig Wallace, counsel for Alex McLean. Cause ordered submitted.

CONTINUED

A121652 Margaret Elliott,

v.

Regents of the University of California;
Dan Judd.

Cause called and argued by Daniel Bacon, counsel for appellant, Dennis Maio, counsel for respondent, Regents of the University of California, and John Hyland, counsel for respondent, Dan Judd. Cause ordered submitted.

At this point in the proceedings, McGuinness, P.J. left the bench and Jenkins, J. re-joined the bench. Pollak, J. presided the rest of the cases.

A121981 Regina Birkner et al.,

v.

Kwai Ho Lam.

Cause called and argued by Stephen Collier, counsel for appellant, and Paul Utrecht, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED

Wednesday, March 25, 2009(Continued)

Division Four

A123070 – Creditors Adjustment Bureau, Inc., v. Bruce Harper.

The order granting Harper's motion for equitable relief from default and default judgment is affirmed. Parties to bear their own costs on appeal. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A121940 – Jacqueline Krug, v. Michael Maschmeier.

The order awarding Maschmeier his attorney fees and costs for the proceedings in the trial court is AFFIRMED. Maschmeier is awarded his costs on this appeal.³⁵ Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Certified for Publication.)

Division Five

A120684 – Angelo Ortega, v. Michelle Morales.

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Stevens, J.³⁶ (Not for Publication.)

Thursday, March 26, 2009

Division Two

A122551 – The People, v. Joseph R. Smith.

³⁵ Maschmeier has not requested an award of attorney fees on appeal. For that reason, and in the interests of justice, our award of costs on appeal does not include attorney fees.

³⁶ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The judgment and sentence imposed are both affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A118309 – The People, v. Danell L. Pratt.

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Richman, J. (Not for Publication.)

A121371 – The People, v. Donald Wayne King.

The judgment of conviction is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Thursday, March 26, 2009(Continued)

Division Three

A122160 – In re M.P. et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau, v. G.R. et al.

The judgment terminating parental rights is affirmed. Pollak, J., We Concur: McGuinness, P.J., Jenkins, J. (Not for Publication.)

A121194 – The People, v. Oscar Maurice Pearson.

The appeal is dismissed, without prejudice to any proper application defendant may see fit to make in the trial court. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A121723 – Jamal Sanad, v. Mohsin Sharif.

The order denying Sharif's motion for relief from default is affirmed. Sanad shall recover his costs on appeal. Pollak, J., We Concur: McGuinness, P.J., Siggins, J. (Not for Publication.)

A121234 – The People, v. Raul Sanchez, SR.

The judgment is affirmed. Siggins, J., We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

A122817 – The People, v. Eric Lamont Harris.

The judgment is affirmed. McGuinness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

A123177 – The People, v. Kevin Clark.

Judgment affirmed. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A120200 – The People, v. Tyrone Cooper.

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A121342 – The People, v. Kristopher Daniel Coulombe.

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Thursday, March 26, 2009(Continued)

A119040 – The People, v. Brian James Burkhart.

The judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Division Five

A119855 – The People, v. Jaime Andres Barros.

The judgment is affirmed. Jones, P.J., We Concur: Needham, J., Stevens, J.³⁷ (Not for Publication.)

A121192 – The People, v. Charles Thomas McEntire, Jr.

The order that appellant pay direct victim restitution is vacated. The \$200 restitution fine imposed by the court is stricken. As so modified, the judgment (order committing appellant to Department of Mental Health) is affirmed. Needham, J., We Concur: Jones, P.J., Stevens, J.³⁸ (Not for Publication.)

³⁷ Retired Associate Justice of the Court of Appeal, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

³⁸ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A120383 – Carlito Quismorio et al., v. Zosima Bumatay Mulato Dizon, as Trustee, etc.

The order denying the special motion to strike is affirmed. Plaintiffs are to recover costs on appeal. Stevens, J.³⁹ We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Friday, March 27, 2009

Division One

A118804 – The People, v. Phoebe Jane Redfern.

The judgment is affirmed. Graham, J.⁴⁰ We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Friday, March 27, 2009(Continued)

A124041 – J.J., v. Superior Court of Contra Costa County, Contra Costa County Bureau of Children and Family Services et al., R.P.I.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. Graham, J.⁴¹ We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A121671 – Estate of Gertrude C. Daley, Deceased. Gregory P. O’Keefe, as Administrator, etc., v. Ronald Daley.

The appeal from the order denying Ronald’s motion for the return of the \$13,329.53 attorney fee award is dismissed as moot. The order denying Ronald’s motion for the immediate receipt of Conrad’s billing statements is affirmed. Graham, J.⁴² We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

³⁹ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁴⁰ Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁴¹ Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁴² Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Two

A123644 – W.P., v. The Superior Court of San Francisco Mateo County, San Mateo County Human Services Agency, R.P.I.

The petition is denied on the merits (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888 [barring subsequent challenges by appeal]; § 366.26, subd. (f)(1); given the immanency of the permanent plan hearing set for April 6, 2009, our decision is final as to this court immediately (Cal. Rules of Court, rule 8.264(b)(3)). Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A121811 – U-Hual Company of California, v. City of Berkeley et al.

The judgment denying appellant's petition for writ of mandate is affirmed. Jenkins, J., We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

A121977 – In re S.A. et al., Persons Coming Under the Juvenile Court Law. Lake County Department of Social Services, v. Sherry L.

The order terminating appellant's parental rights is reversed. The case is remanded to the juvenile court with directions to comply with the inquiry and notice provisions of the ICWA, if it has not already done so. If, after proper inquiry
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and notice, the juvenile court finds that S.A. or T.M. is an Indian child, the court shall proceed in conformity with the ICWA. If, however, after proper inquiry and notice, the juvenile court finds neither child is an Indian child, the order terminating appellant's parental rights and selecting adoption as the permanent plan shall be reinstated. (*In re Alice M.*, *supra*, 161 Cal.App.4th at p. 1203.) Jenkins, J., We Concur: McGuinness, P.J., Siggins, J. (Not for Publication.)

A122571 – In re Charles Brooks, on Habeas Corpus.

The Governor's February 16, 2007 decision reversing the Board's decision granting petitioner parole is vacated. The Board's decision granting petitioner parole shall be reinstated, provided that the Board does not determine that any circumstances occurring subsequent to its decision granting parole adversely affect its finding of suitability.⁴³ Pursuant to petitioner's request and because, absent the

⁴³ Nothing in this decision limits the Board's ability to rescind parole on an appropriate record, based on events occurring subsequent to the Board's determination of suitability. (See Pen. Code, § § 3041.5, 3041.7.)

Governor's action, the Board's 2006 decision would have been final more than two years ago, this decision shall be final as to this court seven days after its filing. (Cal. Rules of Court, rule 8.490(b)(3); *In re Elkins* (2006) 144 Cal.App.4th 475, 503.) Pollak, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

A118542 – Richard Soroori, v. Lillie Jue et al.

The \$1500 award of attorney fees in favor of defendants is stricken. In all other respects the judgment is affirmed. The parties shall bear their respective costs on appeal. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

A121944 – Kawanna Muldrow, v. Kari Kingori.

The order is affirmed. Because respondent did not submit a brief, no costs on appeal shall be awarded. McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

A122102 – The People, v. Corey Alan Cole.

The portion of the judgment as reflected in the July 10, 2008, minutes, indicating appellant was convicted of vandalism under section 594, subdivision (b)(1), shall be amended to show that appellant was convicted of vandalism under the section 594, subdivision (b)(2)(A). In all other respects, the judgment is affirmed. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

A121768 – The People, v. Emile Pernell Richard, Jr.

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The judgment is affirmed. Sepulveda, J., I Concur: Reardon, J. (See concurring opinion by Ruvolo, P.J.) (Not for Publication.)

Division Five

A119028 – The People, v. Luis E. Bermudez.

The order is affirmed. Simons, Acting P.J., We Concur: Needham, J., Stevens, J.⁴⁴ (Certified for Publication.)

⁴⁴ Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A118758 – The People, v. Jesse Otis Garrett.

The judgment is reversed. Stevens, J.⁴⁵ We Concur: Jones, P.J., Simons, J. (Not for Publication.)

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Division One

A117927 – The People, v. Robert Andrew Adams.

The clerk is directed to correct the abstract of judgment to reflect that the conviction on Count 2 is for a violation of Penal Code section 288a, subdivision (c)(2). As corrected, the judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.⁴⁶ (Not for Publication.)

A122224 – In re E.F., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency, v. R.F.

The order of July 14, 2008, is reversed to the extent that it sustains count j-1 of the minor's petition. In all other respects the order is affirmed. Graham, J.⁴⁷ We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A119099 – In re D.V., a Person Coming Under the Juvenile Court Law. The People, v. D.V.

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The dispositional order is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.⁴⁸ (Not for Publication.)

A119147 – In re J.O., a Person Coming Under the Juvenile Court Law. The People, v. J.O.

⁴⁵ Retired Associate Justice of the Court of Appeal, First Appellate District Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁴⁶ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁴⁷ Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁴⁸ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The dispositional order is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.⁴⁹ (Not for Publication.)

A119200 – In re E.A., a Person Coming Under the Juvenile Court Law. The People, v. E.A.

The dispositional order is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.⁵⁰ (Not for Publication.)

Division Two

A122470 – The People, v. Arley Ross Simmons.

The judgment is affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

A121981 – Regina Birkner et al., v. Kwai Ho Lam.

The judgment is affirmed. Defendant shall recover his costs on appeal. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A119834 – D. Craig Anderson, v. Denham Contracting, Inc.

The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

A122907 – The People, v. William Smith.

The judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A120312 – The People, v. Richard A. Edison.

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The trial court's order of commitment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

⁴⁹ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁵⁰ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A119923 – The People, v. Lance C. Morton, Jr.

The sentence is vacated and the case is remanded to the trial court for resentencing in a manner consistent with the opinion stated herein. In all other regards, the judgment is affirmed. Jenkins, J., We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

A120205 – The People, v. Sergio Chan-Tapia.

The appeal is dismissed. Jenkins, J., We Concur: McGuinness, P.J., Siggins, J. (Not for Publication.)

A122072 – The People, v. Roger Pierre Estournes.

The judgment is affirmed. McGuinness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A123273 – The People, v. Andrea Fraley.

The judgment is affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

A118183 – The People, v. Juan Hernandez.

The judgment is affirmed. McGuinness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A121814 – Carl J. Navarra, v. City of Oakland.

The judgment is affirmed. Navarra shall be entitled to recover his costs on appeal. McGuinness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A120272 – George Morf, v. Meridian Commercial et al.

The judgment is reversed and the matter is remanded to the trial court for further proceedings. Plaintiff is awarded costs on this appeal. Pollak, J., We Concur: McGuinness, P.J., Siggins, J. (Not for Publication.)

Division Four

A113035 – Larisa Khazan et al., v. Felix Braynin et al.

The judgment is affirmed. Rivera, J., We Concur: Ruvoilo, P.J., Reardon, J. (Not for Publication.)

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A114369 – Larisa Khazan et al., v. Felix Braynin et al.

The award of attorney fees is reversed, and the matter is remanded to the trial court for further proceedings consistent with this opinion. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

A123408 – In re R.B., a Person Coming Under the Juvenile Court Law. The People, v. R.B.

The juvenile court's disposition order is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

A122592 – Lois Farrell, v. Donald R. Farrell.

The order denying Donald's special motion to strike is affirmed. Sanctions requested by both Donald and Lois are denied. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A124043 – D.K., v. The Superior Court of The City and County of San Francisco, San Francisco Department of Human Services, R.P.I.

Mother's petition for extraordinary writ on the merits is denied. (§ 366.26, subd. (I); Cal. Rules of the Court, rule 8.452; see *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1516.) This decision shall be final immediately. (Not for Publication.)

Division Five

A120678 – Maxlyn Cadlom v, Metalclad Insulation Corporation et al.

The judgment is affirmed. Costs to respondents. Simons, J., We Concur: Jones, P.J., Needham, J. (Certified for Publication.)

A121176 – In re N.M., a Person Coming Under the Juvenile Court Law. The People, v. N.M.

The juvenile court's orders are affirmed. Simons, J., We Concur: Jones, P.J., Stevens, J.⁵¹ (Not for Publication.)

A118362 – The People, v. Anthony Driver.

The judgment is affirmed. Jones, P.J., We Concur: Needham, J., Stevens, J.⁵² (Not for Publication.)

⁵¹ Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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A118480 – The People, v. Billy Ray Carter.

The appeal is dismissed as moot. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

A121065, A122317 – In re H.M., a Person Coming Under the Juvenile Court Law. Solano County Department of Health and Social Services, v. C.M.

The orders are affirmed. Needham, J., We Concur: Jones, P.J., Stevens, J.⁵³ (Not for Publication.)

⁵² Retired Associate Justice of the Court of Appeal, Division five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁵³ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.